

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Kitamura et al. Art Unit : 1644  
Serial No. : 10/531,973 Examiner : Ilia I. Ouspenski  
Filed : November 18, 2005 Conf. No. : 5916  
Title : DNA ENCODING A MAST CELL-DERIVED MEMBRANE PROTEIN

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b)

Applicants hereby petition for reconsideration of the Patent Term Adjustment (PTA) accorded the above-referenced patent application. The Notice of Allowance including a Determination of Patent Term Adjustment under 35 U.S.C. 154(b), mailed April 11, 2009, for the above-referenced application indicates that the Patent Term Adjustment at allowance is 65 days. Reconsideration of the Patent Term Adjustment calculation to decrease Applicant Delay from 153 days to 150 days, and to increase Total PTA from 65 to 68 days, is respectfully requested.

REVIEW OF PATENT TERM ADJUSTMENT CALCULATION

A review of the Patent Term Adjustment History in the PAIR system shows that the United States Patent and Trademark Office (PTO) calculated the Patent Term Adjustment (PTA) as follows:

- 1) A first PTO action was due on or before January 18, 2007 (the date that is fourteen months after November 18, 2005, the date on which the application fulfilled the requirements of 35 U.S.C. § 371). The PTO mailed the first non-final Office Action, a Restriction Requirement, on August 24, 2007, thereby according a PTO Delay of 218 days. Patentee does not dispute the PTO's calculation for this "A Delay." See 37 C.F.R. §§ 1.702(a)(1) and 1.703(a)(1).
- 2) A reply to an Office Action was due on or before March 6, 2008 (the date that is three months after December 6, 2007, the date on which the Office Action was mailed).

**CERTIFICATE OF MAILING BY EFS-WEB FILING**

I hereby certify that this paper was filed with the Patent and Trademark Office using the EFS-WEB system on this date: June 10, 2009.

Applicants filed a response to the Office Action on June 6, 2008, thereby according an Applicant Delay of 92 days. Applicants do not dispute herein the PTO's calculation for this Applicant Delay from March 7, 2008 (the day after the date that is three months after the date on which the Office Action was mailed), to June 6, 2008.

See 37 C.F.R. § 1.704(b).

3) A reply to an Office Action was due on or before November 26, 2008 (the date that is three months after August 26, 2008, the date on which the Office Action was mailed). Applicants filed a response to the Office Action on January 23, 2009. In the Patent Term Adjustment tab of the PAIR/PALM system, the Response to Office Action is incorrectly shown as having been filed on January 26, 2009. As the EFS Acknowledgement Receipt available in the PAIR/PALM system clearly indicates, the reply was filed, together with the Notice of Appeal (which bears the correct filing date in PAIR/PALM), on January 23, 2009. Applicants were accorded a delay of 61 days for the late reply. Applicants respectfully submit that the PTO's calculation of this Applicant Delay contains an error and that the correct Applicant Delay for the late reply is 58 days, from November 27, 2008 (the day after the date that is three months after the date on which the Office Action was mailed), to January 23, 2008.

See 37 C.F.R. § 1.704(b).

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REMARKS

In consideration of the events described above, Applicants believe the PTA calculation of 65 days is incorrect. As such, Applicants respectfully request reconsideration of the PTA in the following manner:

- 1) Total PTO Delay should be calculated as 218 days (for a late first Office Action);
- 2) Total Applicant Delay should be calculated as 150 days (i.e., the sum of 92 days and 58 days); and
- 3) Total PTA should be calculated as 68 days.

This patent is not subject to a terminal disclaimer.

The fee of \$200 required under 37 C.F.R. § 1.18(e) is being submitted herewith. Please apply any other required charges or credits to Deposit Account No. 06-1050, referencing Attorney Docket No. 14875-0142US1.

Respectfully submitted,

Date: June 10, 2009

/RSMcQuade/

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